



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0652]

RIN 1625-AA00

Safety Zone; Ohio River, Louisville, KY

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Ohio River from mile marker (MM) 602.5 to MM 603.5 from 7 p.m. on October 24 through 1 a.m. on October 25, 2022. This action is necessary to provide for the safety of life on these navigable waters near Louisville, KY during a planned film stunt on October 24 and 25, 2022. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Ohio Valley or a designated representative.

DATES: This rule is effective from 7 p.m. on October 24 through 1 a.m. on October 25, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0652 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email MST2 Christopher Roble, U.S. Coast Guard; telephone 502-779-5336, email Christopher.J.Roble@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Ohio Valley
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On July 22, 2022, Messiah’s Star LLC notified the Coast Guard that it will be conducting a film stunt from 7 p.m. on October 24, 2022 to 1 a.m. on October 25, 2022, as part of filming for a film titled “Just One Life.” The stunt is a controlled fall and is to take place from the Big Four Pedestrian Bridge to the Ohio River below at MM 603. The event will include 3 swimmers, a deck boat, and a houseboat.

In response, on August 8, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Ohio River, Louisville, KY (87 FR 48125). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to the film stunt. During the comment period that ended September 7, 2022, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is necessary to protect persons and vessels from the safety hazards associated with the planned film stunt event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Ohio Valley (COTP) has determined that potential hazards associated with the film stunt on October 24 and 25,

2022, will be a safety concern for anyone on the navigable waters of the Ohio River between MM 602.5 and MM 603.5. The purpose of this rule is to ensure the safety of vessels and these navigable waters during the scheduled 7 p.m. through 1 a.m. film stunt.

IV. Discussion of the Rule

As noted above, we received no comments on the NPRM published on August 8, 2022. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 7 p.m. on October 24, 2022 through 1 a.m. on October 25, 2022. The safety zone covers all navigable waters of the Ohio River between MM 602.5 and MM 603.5. The duration of the zone is intended to ensure the safety of vessels and these navigable waters during the scheduled 7 p.m. through 1 a.m. film stunt. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. This safety zone will restrict transit on a one-mile stretch of the Ohio River for 6 hours on one night. Moreover, the Coast Guard will issue a

Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 00 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive

023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will be in place from 7 p.m. on October 24, 2022 through 1 a.m. on October 25, 2022 on the Ohio River between MM 602.5 to MM 603.5.

It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 165 as follows:

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 *continues* to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T08-0652 to read as follows:

§ 165.T08-0652 Safety Zone; Ohio River, Miles 602.5-603.5, Louisville, KY

(a) *Location.* The following area is a temporary safety zone: All navigable waters of the Ohio River between MM 602.5 and 603.5.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Ohio Valley (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) In accordance with the general regulations in §165.23, entry of persons and vessels into the safety zone described in paragraph (a) of this section is prohibited unless authorized by the COTP or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the COTP or a designated representative. The COTP's representative may be contacted at 502-779-5424.

(d) *Enforcement period.* This section is effective from 7 p.m. on October 24, 2022 through 1 a.m. on October 25, 2022.

Dated: September 22, 2022.

H. R. Mattern
Captain, U.S. Coast Guard,
Captain of the Port Ohio Valley.

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